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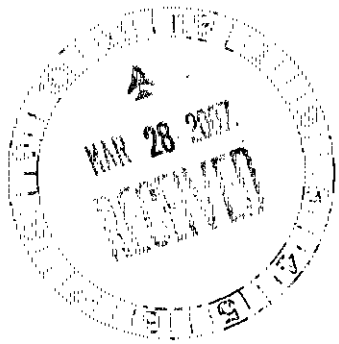


27 March 2007
by express

Hon. Vernon Williams
Secretary
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

218902

Re: PYCO Industries -- Alternative Service -- South Plains Switching, Ltd., F.D. 34889;

PYCO Industries -- Feeder Line Development -- South Plains Switching, Ltd., F.D. 34890; 218904

Hanson Aggregates -- Alternative Service -- South Plains Switching, Ltd., F.D. 34985 218905

PYCO Opposition to SAW "Petition for Leave to File a Supplemental Verified Statement by Edward Landreth ... (pleading e-filed on March 16)

Dear Mr. Williams:

On behalf of PYCO Industries, enclosed please find an original and ten copies of an Opposition on behalf of PYCO Industries with respect to the "petition" e-filed by South Plains Switching (SAW) in F.D. 34889, 34890 and 34985 seeking leave to file another statement by Edward Landreth.

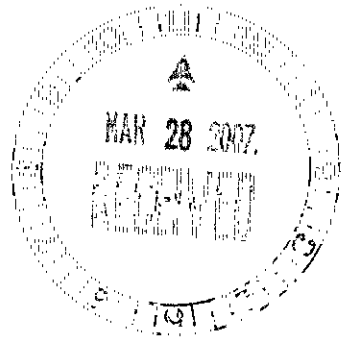
Thank you for your assistance.

Very truly,

Charles H. Montange
for PYCO Industries, Inc.

Encls.

cc. counsel per certificate of service (w/encl.)
Mr. McLaren (for PYCO) (w/encl.)



BEFORE THE
SURFACE TRANSPORTATION BOARD

PYCO INDUSTRIES, INC. -- ALTERNATIVE RAIL SERVICE -- SOUTH PLAINS SWITCHING LTD.	)))	F.D. 34889
PYCO INDUSTRIES, INC. -- FEEDER LINE APPLICATION -- SOUTH PLAINS SWITCHING LTD.	)))	F.D. 34890
HANSON AGGREGATES -- ALTERNATIVE RAIL SERVICE -- SOUTH PLAINS SWITCHING LTD.	)))	F.D. 34985

OPPOSITION
by PYCO INDUSTRIES, INC.
to
"Petition for Leave to File a Supplemental Verified Statement of Edward W. Landreth Correcting Clerical Mistakes" tendered on behalf of South Plains Switching Ltd.

PYCO Industries, Inc. (PYCO) opposes the motion, ostensibly pursuant to 49 C.F.R. Part 1117, of incumbent rail provider South Plains Switching Ltd. (SAW) for leave to file an out-of-time "supplemental verified statement" by Edward W. Landreth in the three above-captioned proceedings.[1] The purported grounds for the motion is to correct an earlier "mistake" by Landreth in his inventory of trackage owned or operated by SAW filed in F.D. 34890 (and not in F.D. 34889 or 34985).

Summary

The SAW pleading and its Landreth statement have nothing to

[1] This petition was e-filed by SAW on March 16. PYCO reminds counsel for SAW that under the Board's rules, PYCO is supposed to be served by express (next business day delivery), and SAW's counsel insists on this "courtesy" in connection with PYCO's filings. SAW needs to reciprocate rather than rely on electronic transmission to PYCO.

do with correcting a Landreth mistake in F.D. 34889 and 34985. Leave to file in those proceedings must be denied as totally unjustified.

As to F.D. 34890, the SAW pleading and Landreth statement which SAW e-filed March 16 are misleading and incorrect on the one hand, and incompetent and contrary to law on the other. Moreover, they constitute either (1) a forbidden supplementary reply filed long out-of-time to a motion filed by PYCO on October 16, 2006; (2) an out-of-time petition to reopen this Board's Decision in F.D. 34890 served January 24, 2007; or (3) both. SAW's pleading also amounts to an effort to delete from this FLA proceeding trackage needed to serve shippers. In consequence, SAW's request for leave only serves to delay and to confuse the proceeding by seeking to revisit issues under submission in subversion of procedural rules. Leave to file should be denied.

Background

SAW represents that the purpose of the Landreth Verified Statement is to correct Landreth's earlier statement submitted by SAW in PYCO's feeder line application (FLA) proceeding (F.D. 34890) in a very limited way. SAW/Landreth state that Landreth inadvertently included two segments of rail in his track inventory (used for establishing the Net Liquidation Value for SAW property in FLA proceeding).

The two segments include the trackage used by Hanson Aggregates' transload facility, and the trackage used to provide

common carrier service to 84 Lumber Company's Lubbock facility. SAW/Landreth claim that SAW sold these parcels to Choo Choo Properties prior to May 5, 2006. SAW says Landreth wishes to correct his inventory (valuation) to delete those two segments from the property owned by SAW included in the feeder line proceeding.

Choo Choo Properties is owned by Larry Wisener, husband of the Delilah Wisener, who claims to own SAW.

The issue of SAW's sales to Choo Choo has already been before this Board. Each time, the Board has resolved the matter contrary to the fashion SAW and Landreth seek here.

First presentation of issue. In retaliation against PYCO last spring and summer, SAW purported to transfer property to Choo Choo, and Choo Choo then purported to cancel certain leases of PYCO, and to bring a state-court trespass action against PYCO, based on unrecorded deeds and transfers from SAW to Choo Choo. PYCO sought relief from this Board. At the time the Board addressed PYCO's motion, neither PYCO nor the Board knew when SAW had purported to deed the property in question to Choo Choo. This Board served a decision on August 3, 2006 in F.D. 34890 (feeder line) and other dockets, in which this Board among other things invalidated all deeds and property transfers after May 5, 2006 (the date of PYCO's initial feeder line application). This Board also rescinded all lease terminations by SAW or Choo Choo, and barred SAW and Choo Choo from doing further terminations.

Second presentation of issue. Hanson Aggregates (SAW's second largest shipper) had supported PYCO's FLA. When Hanson sought service from SAW in December 2006, SAW purported to refuse service and on December 5, 2006, sent a letter cancelling Hanson's track lease. Hanson explained that Mr. Wisener informed it that the property had been transferred to a third party. SAW's lawyer on December 27, 2006 sent Hanson a cancellation notice on behalf of Choo-Choo, which was the third party Larry Wisener referenced. SAW and Choo Choo sought to vindicate their action on the ground the transfer of interest pre-dated May 5. Hanson sought relief before this Board. In the Decision served January 24, 2007, this Board voided SAW's purported pre-May 5 transfer of "Track 269" to Choo-Choo, as well as the purported lease terminations by SAW and Choo Choo. This Board indicated that property transfers to Choo Choo after PYCO put SAW on notice of a forthcoming feeder line application were void.

This Board has thus already twice concluded that SAW was attempted to use sales to Choo Choo "to evade the Board's authority and to prevent that property from being acquired in a feeder line sale." Decision served Jan. 24, 2007, at p. 4 (discussing Decision served August 3, 2006).

PYCO's concern. Since PYCO initially sought relief from this Board, SAW has been deeding portions of its railroad property to Choo Choo by unrecorded quitclaims. Since the deeds are unrecorded, neither PYCO nor the public generally know how

many have been issued, when they were dated, and what property they covered. PYCO diligently sought discovery concerning purported sales by SAW, but did not receive SAW's response as to sales out until September 21. PYCO filed an appropriate motion to void everything after December 20, 2005 (or alternatively January 9, 2006) in respect to those deeds out on October 16, 2006. Because SAW failed to produce in discovery its deed to Choo Choo relating to the Hanson property, PYCO still does not know how many such deeds exist.[2]

PYCO's October 16 motion. By motion filed on October 16, 2006 in the FLA proceeding (hereinafter referred to as PYCO's October 16 motion), PYCO moved for three forms of relief as to SAW's deeds to Choo Choo or others. In particular, PYCO moved

"for an Order by this Board invalidating and voiding (1) two

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[2] When PYCO filed its initial FLA on May 5, 2006, PYCO attached discovery requests (Exhibit P to May 5 FLA), including requests relating to all deeds out by SAW. Although SAW made a limited discovery response on approximately August 4, PYCO did not receive any discovery relating to the bulk of the SAW properties until much later. In particular, pursuant to this Board's orders of August 16 and August 18 (extending procedural deadlines 30 days), SAW did not provide allegedly complete answers and documents until September 21, 2006. PYCO duly filed its revised valuation a week later.

One of the deeds SAW furnished PYCO on September 21, 2006 involved trackage necessary to reach 84 Lumber, an existing rail customer of SAW, in Lubbock. This is evidently one of the parcels that Landreth and SAW now seek to delete from SAW's inventory.

SAW did not produce any deed out to Choo Choo relating to property in use to serve Hanson even though SAW and Landreth now claim that deed was issued prior to May 5, 2006. SAW's discovery response was thus deficient. This calls into question whether there are other errors of omission as well.

Similarly, PYCO did not learn until receiving SAW's discovery response that SAW claims to have transferred PYCO's leases with SAW to Choo Choo in March of 2006.

deeds dated April 28, 2006, from incumbent railroad ... SAW... to Choo Choo Properties, (2) a lease transfer from SAW to Choo Choo dated March 9, 2006, and (3) any other transfer from SAW to another party post-dating December 20, 2005 when PYCO initiated F.D. 34802, or at least January 9, 2006, when PYCO put SAW (and the Board) on notice that a feeder line application would likely be pursued to obtain long-term relief for SAW's inadequate rail service."

Verified Motion to Void Additional Transfers of Property Interests from South Plains Switching Ltd. to Choo-Choo Properties, filed Oct. 16, 2006, in F.D. 34890, et al at p 1.

This Board has not yet issued a decision on this Motion, although this Board's subsequent Decision served January 24, 2007, in F.D. 34890 in effect subscribes to the reasoning of the motion, and grants it as to the unrecorded quitclaim from SAW to Choo Choo relating to the Hanson lead ("Track 269").

Effect here. In seeking through the admission of the Landreth "corrections" to delete the 84 Lumber and Hanson parcels from the valuation inventory, SAW and Landreth implicitly are asking this Board to overrule its August 3 and January 24 orders in F.D. 34890. Rather than delete the properties, the sales on which SAW and Landreth rely for the deletion must be treated as void. The property is properly part of the valuation inventory in F.D. 34890. Leave to file must be denied.

Argument

A. SAW's Pleading Is Misleading and Irrelevant

1. Granting Leave Is Inconsistent with this Board's Rulings to Date

SAW's motion for leave to delete the 84 Lumber and Hanson trackage is nothing more than another obvious effort "to evade the Board's authority and to prevent that property from being acquired in a feeder line sale." F.D. 34890, Decision served Jan. 24, 2007, at p. 4. The motion is all the more flagrant in that it involves some of the very property which this Board's January 24, 2007 decision in F.D. 34890 indicates is very much part of the feeder line proceeding. Indeed, allowing Landreth and SAW to omit Track 269 from SAW's valuation is inconsistent with this Board's action voiding the deed from SAW to Choo Choo relating to the very same property.

For the same reason, the deed from SAW to Choo Choo relating to the 84 Lumber property must also be treated as void. Both the 84 and Hanson segments are properly part of the railroad-owned portion of the SAW system.

It is obviously a non-starter to grant SAW leave to delete two parcels from F.D. 34890 when those parcels are integral parts of its system serving specific shippers (84 Lumber and Hanson). The Board has specifically voided one of the deeds already, and when a motion based on the same reasoning is pending against the other on the same theory that the Board used to void the first.

2. Landreth's Representations Are Misleading

In all events, Landreth's actual correction is either misleading itself, or causes all his prior representations to become misleading. His valuation inventory divides the universe of SAW property into two categories: SAW owned and industry-owned trackage.

By industry, he previously meant track owned by business (shippers) adjoining the railroad, not railroad property belonging to third party non-shippers. Choo Choo is not a business adjoining SAW, and it is certainly not a shipper. It is misleading to "correct" an inventory to treat Choo Choo trackage as industry-owned.

This is all the more the case since SAW nowhere reserved a rail easement or anything close to a rail easement on any of its sales to Choo Choo. The sales to Choo Choo are nothing more than severances of the affected shippers. These purported transfers amount to a SAW effort to engage in an unlawful de facto abandonment as to those shippers through actions by Choo Choo to terminate rail service outside this Board's jurisdiction. The Wiseners effectively admit as much. PYCO has already complained about a trespass action which SAW through Choo Choo is pursuing against PYCO.[3] As SAW's Chad Wisener

[3] They have such an action pending against PYCO. Indeed, this Board's General Counsel sent a letter dated March 22, 2007, to the state court in that proceeding based on inquiries received by Mr. Clemens from the court.

recently emphasized to this Board,[4] SAW "maintains the right to protect its property" and "trespassing will not be tolerated." If Mr. Wisener (d/b/a Choo Choo) owns the property necessary to serve 84 or Hanson (as Mrs. Wisener d/b/a SAW says), then as their son (Chad Wisener) has indicated, the Wiseners are eager to exercise what they believe are their state law property rights to thwart shippers who have rail dependent operations.

3. The Motion Is a Tardy Petition to Reopen or alternatively, a Tardy and Unpermitted Second Reply

The bulk of Landreth's statement has nothing to do with "correcting" his accounting of SAW's property to delete the 84 Lumber and Hanson trackage. Leaving aside his property inventory corrections (which as noted are themselves misleading), the remainder of Landreth's statement is a purported justification for SAW's deeds to Choo Choo on the ground that they are typical business practices in the railroad industry, engaged in by BNSF Railway and its predecessors.

This claim has nothing to do with "correcting" Landreth's earlier statement. It is a stand-alone contention, tantamount to a petition to reopen this Board's January 24 decision. Alternatively, the claim is an out-of-time reply to PYCO's motion filed October 16, 2006, in which PYCO sought to invalidate all SAW's deeds to Choo Choo post-dating December 20, 2005.

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[4] See Chad Wisener Verified Statement at p. 5, attached to SAW's Motion for Leave to File a Reply to a Reply, etc., filed March 14, 2007, in F.D. 34890. Note that this SAW motion for leave was filed only two days before the motion at bar.

Treated as a petition to reconsider the January 24, 2007 decision, the SAW pleading and Landreth material is vastly out of time. 49 C.F.R. § 1115.3(e) provides twenty days for such pleadings. SAW's petition must be regarded as petition to reopen an administratively final action. Such a petition is governed by 49 C.F.R. § 1115.4. That regulation provides that it must be based on material error, new evidence, or changed circumstance. Landreth is not asserting material error or changed circumstance. His claims are evidentiary in nature. But on their face, nothing he submits constitutes "new evidence." Instead, his "new" claims are his opinion concerning deeds existing before he prepared his original statement, and industry conduct before that date as well.[5] This is simply not "new" for purposes of reopening. It follows that the SAW/Landreth material does not fit any category justifying reopening. It accordingly must be rejected as violating 49 C.F.R. § 1115.4.

The other possible construction of the SAW/Landreth pleading is that it is an additional much belated reply to PYCO's October 16 motion to void SAW's 2006 deeds to Choo Choo. But SAW already responded to PYCO's October motion in a pleading SAW filed on November 6. Indeed, SAW's November pleading itself

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[5] Moreover, Landreth is not a spokesman for BNSF or its predecessors, nor does he demonstrate any expertise on the real estate practices of BNSF or its predecessors, nor does he explain how he knows sufficiently about SAW's real estate practices to compare them to BNSF or its predecessors. As we will later discuss, his "evidence" is thus incompetent and inadmissible on what he purports to discuss in this latest SAW pleading.

amounted to an out-of-time petition to reopen the Board's August 3 decision voiding all SAW sales after May 5.

Mr. Landreth's proposed statement which SAW now seeks leave to file in essence seeks to excuse this situation on the ground that it is standard practice by BNSF and its predecessors. While this claim is not true, the key point here is that Landreth could have presented it long ago. Under 49 C.F.R. § 1104.13(a), SAW had twenty days from October 16 to file a reply to PYCO's motion, not twenty days for a first shot, and then another five months to take its latest shot here.

SAW's latest pleading insofar as it amounts to a reply to PYCO's October 16 motion is vastly out of time and must be rejected.

4. Part 1117 Is Not an Excuse

This brings us to another point on SAW's repetitive efforts to revisit past decisions. The SAW Part 1117 petition against which this Opposition is directed is the third SAW Part 1117 petition filed in the past month alone.[6] SAW makes frequent use of Part 1117, which governs "petitions (for relief) not

[6] Invoking Part 1117, SAW filed an emergency motion to reopen the operating protocols for alternative service in F.D. 34890 and F.D. 34890 on February 15, 2007. Invoking Part 1117, SAW filed a Petition for Leave to file the Reply Verified Statement of Chad Wisener in Reply to the Reply, etc., on March 14, 2007. Invoking Part 1117, SAW purported to e-file the Petition for Leave to file the Landreth statement on March 14 as well, and PYCO's counsel received the two SAW petitions (covering Chad Wisener's statement and covering Edward Landreth's statement) on the same day (March 14). Thus, we have three Part 1117 petitions from SAW in less than 30 days, all seeking to reopen prior STB orders out-of-time, or to reply to replies.

otherwise covered." But Part 1117 is not an override of this Board's procedural deadlines and regulations governing appellate procedures. It is for petitions for relief not otherwise covered. Replies, petitions for reconsideration, and petitions to reopen are in fact "otherwise covered." They are governed by specific regulations and time deadlines. They do not become uncovered and thus proper subjects for a Part 1117 submission because they otherwise violate this Board's rules. If the situation were otherwise, the rules would be meaningless and could be ignored. SAW cannot be allowed to circumvent this Board's procedures by invoking Part 1117 as the practitioner's equivalent of a kid crossing his fingers on the playground to escape a tag.

National rail transportation policy commits the Board "to provide for the expeditious handling and resolution of all proceedings required or permitted to be brought ...." 49 U.S.C. § 10101(15). SAW's use of Part 1117 to ignore procedural time deadlines does not just conflict with that policy, but thwarts and corrupts it.

This Board originally indicated it would endeavor to issue a decision in F.D. 34890 prior to the expiration of the period for alternative rail service provided under 49 C.F.R. Part 1146.[7] That period, even after a 30 day pause (at SAW's request), has long since expired. But in order to meet the

[7] See, e.g., Decision in F.D. 34890, served July 3, 2006, at p. 8 (schedule set to allow completion of FLA before October 23, 2006).

resultant deadlines, PYCO faced a demanding procedural schedule to review discovery responses, to resist SAW's retaliatory actions, to file appropriate motions (like that filed October 16 on SAW's deeds out to Choo Choo), to prepare and to submit its valuation case, and to file responses to interveners and to SAW's various motions.

That entire effort is subverted when SAW months later invokes Part 1117 to stuff the record with belated supplementary replies. SAW's tactic not only delays a decision by creating more issues to decide, but it denies PYCO due process at a fundamental level. All parties are entitled to a reasonably equal playing field in which to state their case in an orderly fashion. There is no playing field -- only a free fire zone--when SAW launches pleadings at will regardless of procedural rules.

B. The Landreth Material Is Incompetent

Under the common law, a witness testifying to objective facts must know the facts from observation or he is incompetent to testify to them. If the witness is offering his inference or opinion in matters requiring special training or experience to understand, then he must be qualified as an expert in the field, or his testimony is also incompetent. E.g., McCormick on Evidence (West Pub. 2d Ed.) at p. 149. Insofar as he purports to offer evidence on industry practice or SAW's conformity thereto, Landreth offers no basis for his most recent testimony either in terms of first hand observation (he is not an employee

of SAW), or in special training or experience. Given the conclusory nature of his purported testimony on industry practice, it looks like he is being offered as an expert of some sort. He has demonstrated no expertise on real estate management by BNSF or its predecessors insofar as relevant to make the judgments he purports to make, and PYCO certainly does not admit he has requisite expertise. For all these reasons, he is incompetent as a witness as to the matters at issue. In addition, he is not the kind of independent outside expert who can make a reliable expert judgment about the retaliatory property practices of the Wisener family in comparison to BNSF's property management practices.

Mr. Landreth's most recent offering is also contrary to law. Under 49 U.S.C. § 10903, railroads cannot sell their railroad lines piecemeal especially cutting off shippers without prior abandonment authority (even to close relatives of their owners). There are only two exceptions possibly relevant here: (1) if the railroad retains a rail easement (or at least an interest tantamount thereto so it can provide common carrier services without interference), then a sale of underlying real estate can be undertaken without this Board's pre-authorization; (2) if the track is switch track exempt under 49 U.S.C. § 10906, a railroad may sell it without pre-approval. However, unless one of the exceptions apply, piecemeal sales of lines in general is an illegal de facto abandonment.

One reading of Landreth's latest "opinion" is that he now

claims that BNSF typically engages, and its predecessors typically engaged, in illegal abandonments. If it were true that they did, this would be cause for alarm. Fortunately, it is not the case. Despite inquiry and search, PYCO has found no instance in which BNSF or its predecessors deeded off rail lines so as to sever shippers, let alone to do this in an unrecorded quitclaim essentially to the spouse of the owner. And even if BNSF or its predecessors had engaged in a pattern of illegal conduct, it would not excuse SAW here to do the same.

Looking closely at all Landreth's remarks, PYCO does not think he intends to claim that BNSF is in the business of severing shippers. In Landreth's statement filed November 6, 2006, he seemed to justify SAW's conduct on the ground that SAW had retained an interest sufficient to continue to provide common carrier services across the property it deeded to Choo Choo. If so, this might make SAW's conduct like that sometimes followed by BNSF and other railroads. In particular, in his statement attached as an exhibit to SAW's November pleading, Landreth asserted that the sale of the 84 Lumber lead would not impact on rail operations or shipper access, because there was a previously undisclosed "agreement" between SAW and Choo Choo allowing SAW access.[8] It turns out that the "agreement" relied upon by Landreth is a mere license on its face terminable at the

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[8] See SAW's "Response to Verified Motion to Void...." filed in F.D. 34890 on November 6, 2006, Exhibit B (Landreth) at unnumbered p. 3.

will of Choo Choo on 30 days notice.[9] The 30-day terminable license here does not even mention 84 Lumber, or any other rail shipper. See, e.g., SAW "Response to Verified Motion to Void Additional Transfers ...." filed in F.D. 34890, paragraph 12 of Exhibit L-1 to Exhibit B. SAW thus did not retain anything, let alone anything close to a rail easement. Choo Choo got the whole "bundle of sticks"; SAW reserved no control -- certainly no meaningful control.

Since SAW did not retain anything close to an easement permitting rail service, the only other possibly relevant way to claim that SAW's sale was similar to sales by other railroads is to claim that the trackage is exempted section 10906 switching track. Railroads may sometimes sell off switch or equivalent track to third parties without abandonment authorization (although after inquiry we have identified no such sales by BNSF to third parties involving switch track actually in service as here to active shippers). While it is true that railroads may sell section 10906 trackage without prior Board approval, as SAW has done here, it is not true that the trackage in question here is section 10906 trackage.

SAW has already argued that its trackage is exempt switching track, and this Board has already rejected that claim. In particular, in a decision last June, this Board rejected SAW's argument that its trackage was all excepted track:

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[9] The agreement is evidently the "ELM Track Contract" (attached as Exhibit L-1 to Landreth's Statement filed November 6).

"[w]e disagree that the tracks at issue are switching tracks that fall within 49 U.S.C. 10906. SAW sought and received authority under 49 U.S.C. 10901 to acquire these tracks."

Pyco Industries, Inc. -- Alternative Rail Service -- South Plains Switching, Ltd., F.D. 34802, and Rail General Exemption Authority -- Miscellaneous Agricultural Commodities -- Pyco Industries, Inc. Petition for Partial Revocation, STB Ex Parte No. 346 (Sub-no. 14C), decision served June 21, 2006, at p. 4. In other words, even if similar tracks were excepted tracks as to BNSF (allowing BNSF to do what Landreth incorrectly suggests BNSF does), they are not excepted as to SAW, for SAW sought and obtained treatment of them as lines of railroad. As a matter of law, SAW cannot now arbitrarily reclassify the property as something else, and then abandon or otherwise sever it at will by transferring it to Choo Choo.

This Board's decision in F.D. 34802 and Ex Parte No. 346 (Sub-no. 14C) served June 21, 2006 is now final. It was not appealed by SAW. It is law of the case, or certainly sufficiently controlling so SAW is estopped from challenging it in the feeder line proceeding. This Board's earlier decision renders Landreth's purported opinion concerning railroad industry standards of real estate management totally wrong: once one looks at the evidence (including his own statements to date), he either is arguing that SAW is engaged in illegal abandonments justified solely on the ground that in his view others engage in essentially the same illegal conduct, or he is

comparing apples to oranges (i.e., conduct which others undertake lawfully as to section 10906 track which conduct no one may lawfully undertake as to non-10906 track).

In short, Mr. Landreth's latest effort is not competent, Furthermore, it is based on erroneous claims or assumptions: the BNSF real estate practices Landreth claims he claims exist would only be lawful under conditions not applicable here as a matter of law. Since Landreth's testimony is incompetent on the one hand and based on a fundamental mistake on the other, SAW's motion for leave to file must be rejected.

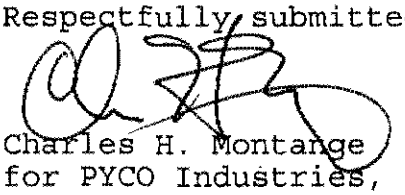
C. Additional Issues

The only error cited by SAW for purpose of the supplementary statement relates to whether certain track is owned by SAW for purposes of the pending PYCO FLA. Presumably that is why Landreth captions his cover letter (incorporated in the SAW pleading) with only F.D. 34890. But SAW seeks to file the paper in F.D. 34899 and F.D. 34985 as well. Since the underlying Landreth report was never filed in either F.D. 34899 (PYCO's Part 1147 alternative use proceeding) or F.D. 34985 (Hanson's Part 1146 alternative use proceeding), there is no Landreth or SAW error in either of those proceedings to correct with the supplemental report e-filed on March 16. Because there is no error to correct, and because error correction is the only justification offered by SAW to put in this latest SAW supplement, leave to file the pleading obviously should be denied in F.D. 34899 and F.D. 34985.

Conclusion

Leave to file SAW's latest petition, filed under Part 1117 because it is forbidden by the actually applicable regulations, should be denied. The leave SAW seeks is a totally unjustified effort to file what amounts to belated replies and petitions to reopen based on incompetent testimony that ignores controlling precedent. SAW's motion also amounts to a back-handed attempt to delete property needed to serve shippers from the scope of the FLA proceeding.

Respectfully submitted,



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Certificate of Service

I hereby certify service of the foregoing Opposition to SAW's "Petition for Leave to File" upon the following counsel of record by express service, next business day delivery, this 27th day of March 2007:

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